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EXTRAORDINARY

PART II—Section 3

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No. 147] NEW DELHI, TUESDAY, JUNE 9, 1953

ELECTION COMMISSION, INDIA

NOTIFICATION

New Delhi, the 26th May 1953

S.R.O. 1071.—WHEREAS the election of Shri Arjan Singh and Shri Dhanna Singh Gulshan, as members of the Legislative Assembly of the State of PEPSU (now dissolved) from the Mahal Kalan constituency of that Assembly, has been called in question by an Election Petition duly presented under Part VI of the Representation of the People Act, 1951 (XLIII of 1951), by Shri Balbir Singh, son of Sardar Balwant Singh, Village and P.O. Gumti Kalan, District Barnala;

AND WHEREAS, the Election Tribunal appointed by the Election Commission, in pursuance of the provisions of Section 86 of the said Act, for the trial of the said Election Petition has, in pursuance of the provisions contained in section 103 of the said Act, sent a copy of its Order to the Commission;

NOW, THEREFORE, in pursuance of the provisions of Section 106 of the said Act the Election Commission hereby publishes the said Order of the Tribunal.

BEFORE THE ELECTION TRIBUNAL, BARNALA (PEPSU)

ELECTION PETITION No. 127 of 1952

Mahal Kalan Constituency of the Patiala and East Punjab States Union Legislative Assembly

CORAM:

Shri Jagjit Singh, M.A., LL.B.—Chairman.

Shri Shiva Gopal Mauthur, B.A., LL.B.—Member.

Shri Dalip Singh Jain, M.A., LL.B.—Member.

PETITIONER:

Shri Balbir Singh S/o S. Balwant Singh, V.P.O. Ghumti Kalan, Dist. Barnala.

Versus

1. S. Arjan Singh son of Jawahar Singh, Village Bhadaur, P.O. Bhadaur, District Barnala, Tehsil Phul (PEPSU).

2. S. Dhanna Singh Gulshan son of Kishan Singh, Village Akalia, P.O. Dayalpura, Bhaika, District Barnala, (PEPSU).

3. S. Nachhattar Singh son of Bagga Singh, of village Ghandawanna, Tehsil Phul, District Barnala, (PEPSU).

4. Sher Singh son of S. Narain Singh of village Jalal, P.O. Dayalpura, Bhaika, Tehsil Phul, District Barnala.

5. S. Nirpal Singh son of S. Balwant Singh of Bhadaur, District Barnala.

(1869)

6. S. Sampuran Singh son of S. Sohan Singh of Tallewal, P.O. Tallewal, District Barnala.
7. Shri Des Raj son of Chanan Ram of Village Bhal Roopa, P.O. Bhal Roopa, District Barnala.
8. Hari Singh son of Rattan Singh of Pandori, P. S. Mahal Kalan, District Barnala.
9. Gurbax Singh Rahi son of Ilira Singh of Barnala.
10. S. Kartar Singh son of S. Sadda Singh, village Amargarh, District Barnala.
11. S. Jabbar Singh son of S. Sher Singh, village and P.O. Bhilla, District Barnala.
12. S. Ranjit Singh son of S. Kehna Singh, village Nanewala, District Barnala.
13. S. Kundan Singh son of Kaka Singh, village Sahejre, District Barnala.
14. Seth Singh son of Bir Singh village Kanganwal, District Barnala.
15. S. Chand Singh son of Narainsingh, village Bhotnan, District Barnala - Respondents.

PRESENT.

S. Hardy Singh, counsel for Arjan Singh, Respondent No. 1.

JUDGMENT

(PER SHRI S. G. MATHUR)

This is an election petition under Section 81 of the Representation of the People Act, 1951, by Balbir Singh, a defeated candidate, in respect of the election held for the Mahal Kalan Constituency of the Pepsu Legislative Assembly in the last general elections. Arjan Singh, respondent No. 1, was the successful candidate for the non-reserved seat and Dhanna Singh Gulshan, respondent No. 2, for the reserve seat. After laying down the grounds for a claim for setting aside the election, the petitioner prayed for two reliefs in para. 9 of the petition to the effect that the election of the respondent No. 1 be declared to be void, and that the petitioner be declared to have been duly elected from this constituency to the said Assembly. He had also added a prayer at the head of the petition for a declaration, that the election be declared to be wholly void.

The petitioner challenged the election with the allegations that Naphhtar Singh, respondent No. 3, a defeated candidate, was below 24 years of age on the day of nomination papers were filed and as such he was not qualified to contest election, and further that he was ineligible for election also on the ground that he was occupying the position as an assessor and was thus to be deemed to be holding an office of profit and that consequently the acceptance of his nomination papers by the Returning Officer was improper in law. Instances of bribery, undue influence and non-compliance with the provisions of law were further alleged to have prevailed during the election, which were said to have materially affected the result of the election against the interests of the petitioner. Under the head 'bribery' it was contended that Sardar Nirpal Singh, respondent No. 5, a big land-lord of Bhadaur, had succeeded in procuring votes in his favour on promise of his making a gift of the areas held by his tenants in their possession, and had actually transferred such rights to them. The lists 'B' and 'C' attached with the petition accused Prof. Surinder Singh Nirola, the Presiding Officer at the Polling Station Chhapa in the constituency, to have abused his powers by favouring Arjan Singh, the communist candidate, by keeping the polling agents of the petitioner under arrest, and detaining certain voters of his who had to return without casting their votes, and also of his having created an atmosphere of terror at the polling area in consequence of which the voters had to go back without exercising their right of franchise. Further allegations were made against him to the effect that on 20th and 21st of January, 1952, he had taken the ballot boxes to his house, and there broke open one of them, and taking out the ballot papers out of it had placed some of them into the ballot box of Arjan Singh, and further that he had himself collected the ballot papers left by some of the ignorant electors within the ballot booth lying hither and thither, and placed them into the ballot boxes of Arjan Singh.

The respondents Nos. 1, 2 and 13 have contested the petition. They have denied all the allegations of bribery, undue influence and non-compliance with the provisions of law, as mentioned in the lists "A", "B", and "C", attached with the petition, and urged that Prof. Surinder Singh Nirola had not committed any such irregularities as were alleged against him in the petition. It was also denied that Nachittar Singh, respondent No. 3, was under age, or was not eligible for election because of his holding the position as an assessor. It was also contended that the petitioner was stumped from raising the question of the respondent No. 3, being under age or of his being an assessor at this stage, as these objections were not

taken before the Returning Officer at the time of scrutiny. A plea was also taken by the respondents Nos. 2 and 13 to the effect that the allegations made in para. 5 of the petition were ineffective for want of a list of particulars of corrupt practices as required by law.

The respondent Nos. 3 to 12 and 14 and 15 remained absent and did not put any contest. The pleadings as put forward by the petitioner and the respondents Nos. 1, 2 and 13 have given rise to the following issues:—

- (1) Whether the nomination papers of S. Nachittar Singh respondent No. 3 were improperly accepted, as on the date of nomination he was 24 years of age and was not qualified to be chosen as member of the Pepsu Legislative Assembly? If so, has this materially affected the result of the election?
- (2) Whether the nomination papers of S. Nachittar Singh respondent No. 3 were improperly accepted as he was an assessor and thus holding an office of profit? If so, has that materially affected the result of the election?
- (3) Whether the petitioner is estopped from raising objections regarding the improper acceptance of the nomination papers of S. Nachittar Singh respondent No. 3 for the reason that he did not take up those objections before the Returning Officer at the time of scrutiny?
- (4) Has the election not been a free one as corrupt and illegal practices of bribery and undue influence extensively prevailed during the election?
- (5) Whether Sardar Nirpal Singh respondent No. 5 induced his tenants and their family members to vote for him on promise of gift of the land under their possession? If so, what is its effect?
- (6) Whether the particulars given in Annexures "A", "B" and "C" of the election petition do not comply with the requirements of the Representation of the People Act? If so, what is its effect?
- (7) Whether on 22nd January 1952 Prof. Surinder Singh Nirola, Presiding Officer of the Polling Station Chhapa, arrested Badan Singh, agent of the petitioner, on the ground that he had issued private identity slips to some of the voters on the previous night and he (the Presiding Officer) also detained some of the voters for thus receiving identity slips? If so, what is its effect?
- (8) Whether Prof. Surinder Singh directed the Polling Officers under him not to issue identity slips and ballot papers to voters who had brought private identity slips issued by Badan Singh and other workers of the petitioner and thus they (the voters) were deprived of the right to vote? If so, what is its effect?
- (9) Whether Prof. Surinder Singh Nirola threatened to arrest and prosecute electors, who had received private identity slips from the agents of the petitioner? If so, what is its effect?
- (10) Whether Prof. Surinder Singh Nirola terrorised the petitioner's agents, who were working and issuing private identity slips outside the polling station, so that they had to go away and leave all papers with one Hav. Prem Singh, who was also directed by the Presiding Officer to leave the booth? If so, what is its effect?
- (11) Whether on 20th and 21st of January, 1952, Prof. Surinder Singh Nirola got a second ballot box signed and sealed for the petitioner on the plea that the spring of the one already signed and sealed was somewhat defective, and after the close of polling on each day, took all the ballot boxes to his house where the original ballot box of the petitioner was broken and some of the ballot papers were transferred to the ballot box of S. Arjan Singh and some were placed in the second ballot box of the petitioner? If so, what is its effect?
- (12) Whether Prof. Surinder Singh Nirola, from 20th to 24th of January, 1952, collected ballot papers left by some of the voters on ballot boxes and placed them in the ballot box of Arjan Singh respondent No. 1? If so, what is its effect?
- (13) Whether Prof. Surinder Singh Nirola, being in league with the respondent No. 1, committed the acts referred to in issues Nos. 7 to 12 with the connivance and knowledge of the respondent No. 1 and his agents? If so, what is its effect?
- (14) To what relief the petitioner is entitled?

FINDINGS

Issue No. 1.—One of the main questions for consideration in the case is the point of age of one of the respondents, Nachittar Singh, the respondent (No. 3), who had filed four nomination papers declaring 26 years and 10 months as his age. Dhanna Singh Gulshan respondent No. 2, took an objection against his nomination that he was less than 25 years of age and was not eligible to seek election. The Returning Officer granted time to Nachittar Singh to furnish proof for his age, and on the adjourned hearing Nachittar Singh made an application Ex. R. 3/A to the effect that his age was 25 years 2 months, that the name given to him at the time of his birth was Darbara Singh which later on, on the occasion of the Amrit ceremony, was changed to his present name Nachittar Singh. Along with this application he filed a copy of an entry of the age of a child named Darbara Singh in it from the birth register of the village marked as Ex. R. 12 claiming it to be the entry for his own birth which noted the date of birth of the child in the date column as 28th September 1926. In support of this application five affidavits, one by himself Ex. R. 4/A, one from his father Ex. R. 5/A, one from his mother Ex. R. 6/A, and two from Harnam Singh and Joginder Singh Lambardars marked as Exs. R. 7/A and R. 8/A, were also filed. The Returning Officer, taking into consideration the affidavits of his mother and father, treated Nachittar Singh as being of more than 25 years of age and accepted his nomination papers (*vide* order of the nomination paper Ex. R. 2/A).

Dhanna Singh Gulshan on the other hand had submitted a transfer certificate from the Government High School Patto Hirasingsh Ex. C. 1 in which Nachittar Singh's age was noted as 9th February, 1929, according to which Nachittar Singh will, of course, be under age at the time of filing his nomination papers. He had filed his own affidavit also (Ex. R. 12/A) in support of his objection.

The case presented before us by the petitioner Balbir Singh is that Nachittar Singh was in fact under 25 years of age at the time of nomination and that the order passed by the Returning Officer accepting his nomination papers was improper. On a study of the schools records about his age we are fully impressed that in fact Nachittar Singh had not completed 25 years on the date of nomination. He was first admitted to the Khalsa High School, Calcutta, in a Primary Class, and after completing his education till the seventh class in 1942, he came over to village Ghandabana and got himself admitted to the Government High School Patto Hirasingsh in Ferozepore District. His elder brother Kartar Singh made an application Ex. P. 3/A for his admission, to the school giving the date of birth of Nachittar Singh as 9th February, 1929. The school leaving certificate granted to Nachittar Singh from the Khalsa High School Calcutta (Ex. P. 1/A) where he received his education in early childhood, was also filed in the Patto Hirasingsh High School while seeking admission, which noted his age as 13 years 1 month and 20 days on the date of the grant of the certificate, and the date of birth as 19th February, 1929. Extract from the admission register of the Government High School Patto Hirasingsh (Ex. P. 2), produced by Hardial Singh teacher P.W. 11 also notes down the date of birth of Nachittar Singh as 9th February 1929.

So far as the entries mentioned above go, it cannot be doubted that at the time Nachittar Singh was admitted to the Khalsa High School at Calcutta, or later when he was sent to the Government High School Patto Hirasingsh, the age given by his guardians at the time of admission was 9th February 1929, and as that date was given out by his elders in the years so far back as 1942 and earlier we find no reason to doubt the truth of these entries. At the time of his admission to these schools there was no reason whatsoever for his brother Kartar Singh to enter a wrong date in the admission form or for his father Bagga Singh to give incorrect date when he was sent to the Khalsa High School at Calcutta.

The oral evidence on the point of age, produced by the petitioner consists only of the statements of Nachittar Singh P.W. 12 and Bagga Singh P.W. 17, but both of them are interested persons and not worthy of reliance at all. It is to be noted that both of them had filed affidavits at the time the nomination papers were filed to the effect that Nachittar Singh was more than 25 years of age, and they had further managed to procure the affidavits of the mother of Nachittar Singh and also of two Lambardars Harnam Singh and Joginder Singh (R.Ws. 1 and 2) to lend support to this point. Obviously on that occasion their interest lay in proving Nachittar Singh to be of age for purposes of election, but now, as he has been defeated in the election and is keen to throw out the rival candidate Dhanna Singh Gulshan out of his seat, both of them have taken up quite an opposite view that he was much below 25 years at nomination time and his nomination papers should have been rejected at the time of scrutiny. Such witnesses, who have no

conscience of their own and who are prepared to swear to any sort of affidavits, however false they may be, cannot be accepted as stating the real truth. The only explanation offered by Nachittar Singh was that he gave his age as above 25 in his affidavit as he found it entered like that in the electoral roll, but that cannot be any acceptable explanation for submitting an affidavit which, according to his statement made now, was totally false to his knowledge.

Bagga Singh his father (65) has grown old and his memory is weak now. At one place in his statement he states the number of the children born to him as eleven but proceeding further by counting them in detail, the number was increased to thirteen. When he is not clear in his mind even about the number of his children his statement as regards their ages cannot be impressive. Now if we look to the affidavits he and Nachittar Singh had filed in November 1951 before the Returning Officer, Nachittar Singh was declared to be above twenty five at the time of nomination, but now when they come to support the petitioner's case they feel no hesitation in putting down his age as below twenty five, without a prick of conscience in them. While anxious to show himself above twenty five at the nomination time, he had filed a copy of a birth entry of one child of his father, whose name was given in it as Darbara Singh and with a view to take advantage of the said entry and to show that it related to Nachittar Singh, he and Bagga Singh went to the length of introducing a story that the name Darbara Singh given to Nachittar Singh at the time of his birth was changed to the present name at the time of his *Amrit* ceremony, a ceremony observed among Sikhs at a later stage of life, but now as they are anxious to see that the rival candidate is thrown out of his seat, they totally ignore the position they took in the affidavits and are prepared to swear to show the age less than 25 years. Such persons who are prepared to make glaring contradictory statements on different occasions cannot be accepted as truthful witnesses.

With a view to establish Nachittar Singh to be more than 25 years in age at the time of nomination, the respondents have examined Harnam Singh Lamberdar (R.W. 1), Joginder Singh (R.W. 2), Zora Singh (R.W. 12) and Dhanna Singh Gulshan (R.W. 13), but their statements also do not carry us any further. The first two are those from whom affidavits were procured by Nachittar Singh in his favour at nomination time Harnam Singh deposes that he was not definite whether Nachittar Singh was in fact the same boy who was previously called Darbara Singh as it was possible that Darbara Singh may have died and another boy, called Nachittar Singh, may have been born at Calcutta and further that the estimate of the age of Nachittar Singh given by him in the affidavit was only an approximate one. It was further added by him that some paper had been read out in the Court of the Deputy Commissioner in which the age of Nachittar Singh was written as 25 years and 11 days, and as he happened to be present on that occasion, he also heard it and so it was that he stated his age to be more than 25 years in his affidavit. This statement clearly indicates that the affidavit, which he filed, was not based on his personal knowledge but only on some loose information which had come to him in the Court of the Deputy Commissioner casually. The statement made by Joginder Singh (R.W. 2) is also not worth placing any reliance. He introduces a story about Nachittar Singh's having stayed in the village from the time of his birth till the age of 15 and that it was on his reaching that age that he was taken to Calcutta, although according to the statement of Bagga Singh (P.W. 17) and even Dhanna Singh Gulshan (R.W. 13), the contesting respondent, Nachittar Singh left for Calcutta when he was nearly 4 or 5 years of age. The witness also admits that the *Amrit* ceremony, of which a mention was made by him in his affidavit, did not take place in his presence, and that he had simply heard about it that it had taken place at Calcutta. The affidavit filed by him thus carries no value as the fact of the *Amrit* ceremony for proof of which it was filed was never witnessed by him. Zora Singh (R.W. 12) puts Nachittar Singh to be 25 or 26 years of age, but he also does not seem to have any personal knowledge about his birth. According to him Nachittar Singh was born at village Ghandabanna while his father is definite that this son was born at Calcutta. He, in cross examination, further acknowledges that he had no definite knowledge as regards the birth of the children that were born to the parents of Nachittar Singh at Calcutta. Dhanna Singh (R.W. 13), the contesting respondent, also cannot be accepted as one having personal knowledge about the birth of Nachittar Singh. He in fact had filed an affidavit before the Returning Officer to treat Nachittar Singh as a person much below 25 and had relied on an entry contained in the school leaving certificate Ex. C. 1. which gave the age as 9th February 1929, and it was on the basis of the said entry that he had laid an objection against the nomination papers of Nachittar Singh. His contention now calling Nachittar Singh to be of 25 years of age carries little value.

To rebut the presumption raised by the school record in favour of the contention put forward by the petitioner the respondents were required to produce some convincing evidence to show that Nachittar Singh was in fact more than twenty-five at the time of filing of the nomination paper. They put reliance on the affidavits filed by Bagga Singh (P.W. 17), Nachittar Singh (P.W. 12) Nachittar Singh's mother, and the two Lamberdars (Exs. R6/A, R4/A, R5/A, R7/A and R8/A). It is quite evident that on the occasion these affidavits were prepared, Nachittar Singh and his father Bagga Singh had one main object in view to get the nomination papers of Nachittar Singh somehow accepted by the Returning Officer and to obtain that object they were prepared to stoop to concoct any stories and state any lies. While describing his age as more than 25 it was given out in the affidavits that the name given to Nachittar Singh at the time of his birth was Darbara Singh, which subsequently was changed to Nachittar Singh at the time of Amrit ceremony. But this allegation remains un-supported on the record as Bagga Singh and Nachittar Singh, as P.W. 17 and P.W. 12, are not prepared to support this story of the change of name, nor do the statements of the respondents witnesses (R.W. 1, and R.W. 2) are helpful for the purpose. In case the respondents had succeeded to establish the truth of the alleged story of the change of name on the occasion of the Amrit ceremony as was stated in the affidavits, they could have gained some point in their favour, but in absence of proper evidence the only presumption is that the entry of the name of Darbara Singh in the extract of the birth register, related to some other child of Bagga Singh and not to Nachittar Singh and is not helpful to fix the age of the latter.

Discarding the oral evidence adduced by the parties for considering the age, we have to take into consideration the birth entries as appeared in the school admission register, Ex. P. 2, Nachittar Singh's admission form submitted by his brother Kartar Singh at the time of his admission in the Patto Hirasingsh High School Ex. 63/A and the birth entry as noted in the school leaving certificate Ex. P1/A granted to Nachittar Singh on the occasion of his leaving the Calcutta School, which furnish sufficient material for fixing the correct age of Nachittar Singh. The age appearing in these documents was declared by the guardians of the boy in his childhood in a normal course while sending him to schools and we feel no hesitation in accepting the said age as correct and the true one, and looking to these entries, we come to the conclusion that Nachittar Singh was certainly much below 25 at the time he filed his nomination paper in November, 1951.

In view of Art. 173 of the Constitution of India a person is not to be deemed qualified for a seat in the Legislative Assembly if he has not completed 25 years of age, and as Nachittar Singh was much below the prescribed age at the time of filing his nomination paper he was evidently not qualified to aspire for a seat in the Legislature.

We have to observe that the conduct of Nachittar Singh and Bagga Singh in presenting false affidavits before the Returning Officer is highly condemnable and cannot be looked over. They deliberately and knowingly introduced false statements about Nachittar Singh's age and of the change of his name at the Amrit ceremony, statements which they themselves are now falsifying by their depositions before the Tribunal, and by that method they succeeded in misleading the Returning Officer to secure orders in their favour. No one can be permitted to make use of the affidavits during election proceedings without feeling a responsibility for their consequences, if they turn out to be false. Considering that these affidavits were false and were prepared with an evil motive to secure incorrect orders, we recommend that both these persons should have a trial for making false affidavits before a criminal court.

The acceptance of the nomination of Nachittar Singh has materially affected the result of the election. It cannot be visualised as to what the result of the election had been had Nachittar Singh been kept out of the field. The number of votes secured by him at the election amounted to so many as 7,657, quite a big number which, if divided amongst various other candidates, would certainly have altered the picture of the election. Para 4 of the petition enumerated the number of votes secured by the different candidates. Arjan Singh received 11,795, Balbir Singh 11,513, Dhanna Singh Gulshan 10,275, Hari Singh 6,720, Sher Singh 5,842, Nachittar Singh 7,657, besides four others whose number ranged between 3,000 to 4,000 and even less. Looking to the number of votes secured by various candidates it is difficult to presume that if Nachittar Singh had been out of the field Arjan Singh or Dhanna Singh, respondent Nos. 1 and 2, would still have secured the number of votes which they succeeded in getting in the last general election as against the other candidates. We are definitely of the opinion that the result

of the election has been very seriously affected by the acceptance of the nomination papers of Nachittar Singh, which should have been rejected on the ground of his being under age for election purposes. The issue is decided in the affirmative.

Issue No. 2.—Nachittar Singh respondent No. 3 was admittedly on the list of assessors for the Court of Sessions Judge Barnala in the year 1951, and a point is raised in the petition that as he was holding the position of an assessor he was not eligible for election. The main point for consideration is whether by virtue of his being an assessor he had lost his right for election as is urged by the petitioner.

Article 191 of the Constitution of India lays down disqualifications for membership and it says that a person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly or Legislative Council of a State—(a) if he holds any office of profit under the Government or the Government of any State, specified in Schedule 1, other than those declared by the legislature of the State by law not to disqualify its holder..... Now the question is whether assessorship amounts to an office of profit, as is contemplated by this Article. In our opinion "Office of profit" would not cover an assessor, who is required to attend the Sessions cases to help the Sessions Judge in the trial. It is not of his own free will that he aspires to acquire this position, but according to the scheme of the Criminal Procedure Code a bounden duty is laid on every citizen of the country to render assistance for discharge of the sessions work. Sections 319 and 320 of the Criminal Procedure Code may be looked into to ascertain the actual position an assessor occupies in the scheme of the criminal law. Section 319 says that all male persons between the ages of 21 and 60 shall, except as next herein-after mentioned, be liable to serve as jurors and assessors at any trial held within the district in which they reside, or, if the local Government on consideration of local circumstances, has fixed any smaller area in this behalf, within the area so fixed. Section 320 enumerates a few classes of persons who are exempted from liability to serve as jurors or assessors. Thus it is under law that all citizens of particular ages are bound to serve as assessors as a part of their duty. Holding an office of profit would imply that one is occupying a position wherefrom he is deriving any benefit, material or otherwise, or at least exercises any powers or influence by virtue of such a position. But no powers or privileges are attached to the position of assessorship nor any material gain is allowed to him while serving in that capacity. He is not paid any fee or remuneration or allowance for that purpose. He is simply paid travelling allowance and diet money for the hearing that he has been called upon to attend, but the payment in the shape of diet money or travelling allowance cannot be taken as a payment in lieu of the services rendered by the person concerned. So there is neither any material gain nor any special privileges or powers attached to such a position, on the other hand the position of an assessor is in fact a liability which every citizen is required to discharge whenever called upon by the Government.

The point came up for discussion in the Gazette of India, Extraordinary, No. 6, dated January 6th, 1953, and the learned members of the Tribunal have very elaborately discussed in it the effects of the position of an assessor and of his duties with reference to Art. 102 of the Constitution of India, which are similar to those as are covered by Art. 191 of the Constitution, and held that the case of an assessor is not one of holding an office of profit within the meaning of Art. 102. The view expressed in the commentary of the Constitution of India by Basu at page 346 is in the words that in order to be an "office of profit" it must first be an 'office' which means as 'employment' with fees and emoluments thereunto belonging (Blackstone). In the case of an assessor, however, no question of fees and emoluments arises at all.

After giving our full consideration to the point in discussion we are of opinion that merely holding the position of an assessor does not amount to holding an office of profit within the meaning of Article 191 of the Constitution of India, and it is not to disqualify an elector from claiming a right to seek election for the Legislative Assembly of the State. The issue is, therefore, decided against the petitioner.

Issue No. 3.—The plea that the petitioner had not come forward with any objection before the Returning Officer against the nomination of Nachittar Singh is no valid ground to debar him from contesting the election by an election petition before a Tribunal on the ground that a particular candidate stood disqualified for seeking election, as there is no provision of law under which one must first come before the Returning Officer with his objections before he can assert a right to contest the election after it is over. The contention has no force and the issue is decided against the respondent No. 1.

Issue No. 5.—An accusation was made against S. Nirpal Singh respondent No. 5 one of the candidates, that he had procured votes of his tenants and the members of their families by making a promise of the gift of the entire area of land that they were holding in their possession by way of reward, and that the said act of his amounted to a corrupt practice, which had affected the result of the election. But the said allegations are not established by any reliable evidence on the record. Not a single tenant is examined to prove the aforesaid allegations or that S. Nirpal Singh had ever approached the tenants or induced them to cast votes in his favour offering the land as a gift to them by way of reward as is alleged. Nor did the petitioner make any attempt to bring on record any deed of transfer which might have been executed by S. Nirpal Singh in favour of the tenants. The only evidence consists of the statement of Balbir Singh petitioner (P.W. 23) himself, according to whom five days before the commencement of the polling he happened to attend a meeting at Bhadaur where the tenants of S. Nirpal Singh were making a request to him to relinquish his rights of land-lordship in their favour before the election time, but that S. Nirpal Singh was not willing to do so and he was telling them that he would do so after he succeeded in the election. In the first place the said statement stands by itself unsupported by any other witness. But even if his statement is believed, it simply means that it were the tenants who were practically persuading the land-lord to agree to transfer lands to them before election, on an offer on their part of a promise to vote for him which however, was not acceptable to him, who proposed to postpone the matter till after elections. The statement made by him is no evidence to establish the point as was urged by him in the petition that S. Nirpal Singh had given inducements to his tenants by offering land to them as a reward for casting votes in his favour. Ex. P.7/A purports to be a report made by S. Nirpal Singh to the Patwari five days after the election time, in which he is said to have consented to make the transfer. There is, however, nothing to show that any transfer was actually made. This report too is not of any help to prove the fact of actual transfer. The petitioner, if he was really serious for establishing the charge against S. Nirpal Singh's procuring votes in such an objectionable manner, ought to have brought on the record some evidence of a convincing nature which he has perfectly failed to do. The issue is decided against the petitioner.

Issues Nos. 7 and 8.—Under the heads 'Undue Influence' (List 'B') and 'Non-compliance with the provisions of law' (List 'C') a number of charges of serious nature are levelled against Shri Surinder Singh Nirola accusing him of helping the cause of Arjan Singh, respondent No. 1, a communist candidate, by committing acts of objectionable nature. It was said against him that on 22nd January, 1952, the third polling day in the Chhapa Polling Station, he had taken Badan Singh, the polling agent of the petitioner, under arrest on pretence that he had issued private identity slips to some of the voters of the petitioner on the night between 21st and 22nd January, that along with him he had detained a few other voters as well who were found possessing such slips, and that he had issued directions to the Polling Officers not to issue official identity slips and ballot papers to such voters who were found possessing the private identity slips issued the night before, and that the effect of these arrests was to frighten away the voters from the polling booth. Accusations were further made against him about his creating an atmosphere of terror, and of his tampering with the ballot boxes and like that, which will be discussed in other issues.

It appears from the evidence that on 22nd January, 1952, the Presiding Officer, Shri Surinder Singh Nirola, noticed a few voters holding private identity slips issued by the polling agent of Balbir Singh petitioner a night earlier, and he got an idea in his mind that official identity slips should not be issued to such voters by the Polling Officers on the basis of such private identity slips, and as is stated by M. Gian Chand, Police Sub-Inspector (P.W. 3) who was posted on duty at the Polling Station Chhapa, the Presiding Officer spoke personally to such voters, who were standing outside the polling booth, that if any one of them had private identity slips issued by the polling agents of any candidate on the previous night he would not be allowed to vote on the basis of such a slip unless he secured identity slips from the camps of the candidates afresh. The same day at about noon time Sardar Surjit Singh Sodhi, Deputy Commissioner, Barnala (P.W. 4) and S. Siasat Singh, Superintendent of Police, Barnala (P.W. 1) happened to visit the polling station in their round to see how the polling was progressing in different polling stations. The Presiding Officer at once reported the matter to the Deputy Commissioner and asked his advice on it. The Deputy Commissioner (P.W. 4) has deposed that the Presiding Officer brought the said incident to his notice just when he reached the polling station, giving out his view that the issue of such private identity slips amounted to canvassing, which was not permissible under

law, but that he informed him (the Presiding Officer) that the issue of such identity slips was not to be considered of such a nature as was prohibited by the rules, and that after a little talk the Presiding Officer admitted that his interpretation of the rule was incorrect. S. Siasat Singh (P.W. 1) has also spoken of the talk which the Presiding Officer had with the Deputy Commissioner and he also gives out that the Deputy Commissioner had advised the Presiding Officer that the view held by him was wrong, and that such voters, against whom objection was taken, were also to be allowed to cast their votes. He as well points out that it was the Presiding Officer who was the first person to bring this incident to the notice of the Deputy Commissioner, and according to him the number of persons who were found detained was not more than 10 or 12. S. Mohinder Singh (P.W. 2) Assistant Superintendent of Police also happened to pay a visit to Chappa Polling Station at about 11-30 A.M. and he added that on meeting the Presiding Officer he was informed by him that he (the Presiding Officer) was holding an inquiry against Badan Singh and certain electors on the point of the issue of private identity slips. The Polling Officers, Rajinder Singh (P.W. 6), Joginder Singh (P.W. 7) and Din Dayal (P.W. 8) have further stated that during the course of polling they were informed by the Presiding Officer that they should inquire from the electors

whether any private identity slips had been issued to them on the previous night, that such persons who might be possessing such slips, may be referred to him direct. Statements of these three witnesses are, however, not free from exaggerations and are not to be accepted at their face value. According to Rajinder Singh (P.W. 6), one of the polling officers, the number of the persons made to sit by the Presiding Officer was 5 or 6. The other polling officer, B. Joginder Singh (P.W. 7), in his examination-in-chief increased the number to 15 or 20 who were said to have been referred by him to the Presiding Officer and detained by him, but in his cross-examination he further increased the number of detained persons to 40 or 50 adding further that the number of actual cases referred by him to the Presiding Officer before the arrival of the Deputy Commissioner amounted to 70 or 80, and that 40 or 50 such persons were referred by him to the presiding officer after the Deputy Commissioner had left the place. But all this is evidently an exaggerated statement and smells of partiality. Din Dyal (P.W. 8) in his examination-in-chief put the number of voters, who were referred by him to the Presiding Officer and detained by him as 100 or 150, though in cross-examination he reduced the number of detained persons to 40 or 50. If the statements of Din Dyal and Joginder Singh are to be accepted one has to come to the conclusion that the number of persons detained that day within the polling booth was above one hundred, a position which is not supported at all by the evidence on the record. According to the statements of the Deputy Commissioner (P.W. 4) and the Superintendent of police (P.W. 1), however, the number of persons found by them sitting near the booth, when they paid a visit there at 12 O'clock in the day did not exceed 10 or 12, and it is not likely that the Presiding Officer would detain any other person after the advice received from the Deputy Commissioner. It is evident that P.W. 6, P.W. 7 and P.W. 8 have introduced a lot of exaggeration in their statements. There is nothing to show that the Presiding Officer, while asking the persons to sit, was actuated by an evil motive against the petitioner and it shows his bonafides that as soon as the Deputy Commissioner arrived at the spot he reported the matter to him and took his advice on the point. In such a case it stands to reason that after the Deputy Commissioner had left the polling station the Presiding Officer must have changed his attitude towards the voters who were found possessing previous night issued identity slips and would have naturally taken away his previous order. To presume that the Presiding Officer would still continue to enforce his previous order and continue detaining persons or keeping the already detained persons under check, even after his meeting the Deputy Commissioner, does not appeal at all.

The other witnesses examined by the petitioner also have evidently put in exaggerated statements. Man Singh (P.W. 10), who calls himself a polling agent of Dhanna Singh, and Arjan Singh (P.W. 16), who calls himself as one of the persons detained, put the number of the detained persons at 30 or 40. On the other hand Sarwan Singh (P.W. 9) and Gurbax Singh (P.W. 15) fixed the number at 15 or 20. These witnesses thus are not clear amongst themselves as regards the actual number of the detained persons. Evidently each one has fixed the number as it came to his mind and as he thought would suit the petitioner better.

A few other witnesses are also examined to state that persons who had gathered at the polling station for purposes of casting their votes were compelled to return for fear that if they entered the booth they might also not be taken under arrest like Badan Singh and others. But in the first instance their story of putting Badan Singh or any other voter under arrest is incorrect. As has already been mentioned above, the fact simply was that a few persons were detained at

the spot for enabling the Presiding Officer to satisfy himself as to whether the issue of private identity slips a day earlier was regular or not and nothing more. There was actually no arrest nor is there any material to show that the Presiding Officer had committed any other act of an offensive character, which might have created a sort of terror in the minds of the general public. The voting in fact continued till evening as is admitted by witnesses on both the sides. Lal Singh, Puran Singh, Kishan Singh and Ralla Singh (R.Ws 3 to 6) have deposed that all the persons, who went to the polling station for casting their votes, did actually exercise their right of franchise quite in an unobstructed manner. It is not spoken that any sort of row was created outside the polling booth on account of the aforesaid incident which might have frightened the people from exercising their right to vote. Nor does it appear from their statements that there was any check for the voters to exercise their right of voting. It may be that in the early hours of voting some sort of commotion might have been created because of the inquiry started by the Presiding Officer but that was not of such a type as to create any adverse effects in the minds of the public present at the poll. If any person happened to return on account of some panic, created in his mind out of his own imagination the Presiding Officer could not be held to be responsible for it. Even the evidence to show that persons had actually returned without casting votes is too vague and indefinite and cannot be relied upon. Sarwan Singh (P.W. 9), one of the persons who speaks about the return of persons has named a few members of the crowd who were returning from the polling booth, and about whom it was said that they were coming back for fear of being detained at the polling booth. But it is significant that none of these persons whose statements could have carried some weight, they being Lambardars and men of position, is called to the witness-box. He had named Narain Singh, Santokh Singh and Amar Singh, three other persons also, who were returning with the crowd but they too are not examined. It becomes difficult to lay reliance on such a person when so many persons, who were actually present in the crowd and could be called for evidence are kept away. Man Singh (P.W. 10) is another person who also speaks about the same fact, but it is to be noticed that this witness calls himself as the polling agent for Dhanna Singh Gulshan the respondent No 2 who is one of the chief contesting respondents. If he were in such good books of Dhanna Singh Gulshan as to be appointed by him as his polling agent, we could not expect from him such a damaging statement, as is made by him. Evidently he has his own motives to speak for the petitioner to damage the cause of Dhanna Singh.

The petitioner has also examined a few female witnesses to lay a case that the female voters had actually returned without casting their votes. Out of these Rajan Kaur (P.W. 20) and Sampuran Kaur (P.W. 21) never reached the polling station and according to them they stayed back as they learned it as a rumour that voters were being detained at the polling station. Amar Kaur (P.W. 18) and Kapur Kaur (P.W. 19) deposed that they returned from the Polling Station without casting their votes and they learned outside the booth area that voters of S. Balbir Singh were being detained. These witnesses actually never attempted to secure a ballot paper and their statements that they abstained from voting, lest they may be detained at the polling station carry no weight.

From the statements of the witnesses examined by the respondents, on the other hand, it appears that the voting continued the whole day and the voters of village Kasba had exercised their right of vote quite freely. Lal Singh, Puran Singh, Kishan Singh and Ralla Singh (R.W. 3 to 6) are all residents of Kasba and they speak about exercising their right of voting and also that voters, male and female who were found by them going to the polling station had exercised their right of voting. Kishan Singh and Ralla Singh (R.Ws 5 and 6) said about their reaching the polling station in the afternoon and deposed that they did not find any persons detained within the polling booth at the time they reached there. Puran Singh (R.W. 4) speaks that about 40 ladies were in his party when he reached the polling booth and Lal Singh (R.W. 3) adds that about 40 or 50 other ladies were present at the polling station when he reached there.

Thus it appears from the evidence on the record that on 22nd of January 1952, the Presiding Officer noticing a few privately issued identity slips formed an opinion that issue of such slips amounted to canvassing, which was forbidden by law, and that it was with the intention of ascertaining how far his view was correct that he had asked the holders of such slips, who were brought to his notice to sit near the booth, and as soon as the Deputy Commissioner and the Superintendent of Police arrived at the polling station he at once approached them and sought their advice on this point. The Deputy Commissioner, however, informed

him that his view was wrong to which he also finally agreed and expressed regret. All these allegations that Badan Singh was taken under arrest or that the voters were detained and kept away from exercising their right to vote with an ulterior motive of damaging the cause of the petitioner or improving the winning chances of Arjan Singh respondent No. 1, as is alleged by the petitioner, were simply absurd. The petitioner had called the Presiding Officer to be a communist implying thereby that he had his leanings towards the communist candidate, which seems to be without any foundation. Not an iota of evidence is brought on the record in support of the said allegation. Nor could it be said that Badan Singh was actually kept under arrest. Admittedly he was not put under lock. Nor was any watch put beside him to check his movements. It is also further to be noted that the Presiding Officer had actually informed all the voters that in case they were holding private identity slips issued a night before, they were to obtain fresh identity slips from their agents that day, implying thereby that in fact there was nothing in his mind to check the voters from exercising their right of voting, but that he was simply pointing them out a method which, according to his views, would regularise the voting. So it cannot be said that the Presiding Officer was in any way laying obstructions against the voters of Balbir Singh from exercising their right to vote. It was only because he had formed an opinion as regards the invalidity of the previous night issued identity slips, that he wanted to decide as to what action was to be taken in respect of them, and it was with this view that he had asked a few voters to sit there and to wait till he came to a final decision in his mind.

The facts, as we find proved on the record, are simply these that on 22nd of January, 1952, the Presiding Officer had asked a few voters, 10 or so in number, to sit near the booth for such time that he satisfied himself as regards the regularity of the previous night issued identity slips, that he had also issued directions to the polling officers to keep back official identity slips from such voters, who happened to possess such identity slips, but that no acts or hardship or terror were committed by any of the polling staff, which could create a frightening attitude in the minds of the general public, and also that the voting continued the whole day freely and without any check. Considering all these points we are of the opinion that the alleged acts complained against the Presiding Officer did not in any way affect the voting adversely and they are not of any value to challenge the validity of the election. The issues are, therefore, decided against the petitioner.

Issues Nos. 9 and 10.—Wild allegations are made in paras 2 and 3 list 'B' (Undue Influence) to the effect that the electors, who wanted to vote for the petitioner and who were standing outside the polling booth were actually threatened with arrest and prosecution in case they stayed on at the booth and attempted to vote for the petitioner and further that the Presiding Officer had created such a terror for the petitioner's voters that the petitioner's agents, who were working outside the polling booth and issuing private identity slips, ran out of fear leaving the voters lists and other papers with one Puran Singh Havaladar of Gumti. These allegations are simply imaginary ones and are coming from a frustrated mind. Not a single witness is put in the witness box to speak in support of the said allegations. The issues are decided against the petitioner.

Issue No. 11.—Another charge was made against Prof. Surinder Singh Nirola that on 20th and 21st of January, 1952, the first two days of polling, the Presiding Officer had changed the polling boxes, that he first got sealed and signed one ballot box for the petitioner and before the polling started got another similar box sealed and signed for him on a false plea that a spring of the previous ballot box was slightly defective and that that box had to be replaced. Further that after the close of the polling at 5 p.m. on each day the Presiding Officer took away to his house all the ballot boxes and kept them in his private custody and while they were in his custody in the night the original ballot box of the petitioner was broken open at his residence by him and some of the ballot papers taken out of it were placed in the ballot box of Arjan Singh and some were placed in the second box of the petitioner. Again we have to say that all these allegations appear to be quite false and not even an attempt is made to establish the charges contained in them. M. Gian Chand, Police Sub-Inspector (P.W. 3), who was in-charge of the police party for polling station Chhana to look to the polling arrangement and who was responsible for carrying the ballot boxes from the polling station to the headquarters has, however, deposed that after the polling ended for the day the boxes were kept in a room which used to be locked by the Presiding Officer and two constables were posted to keep a watch at the room during the night and the next morning the ballot boxes used to be taken in a police truck

to Barnala. There is no evidence whatsoever to give any indication that the ballot boxes were in any way tampered with after they were locked up in the room. The sub-inspector has added that had any one entered the room, the constables would have reported the matter to him. The charge is simply malicious and unsupported by evidence. The issue is decided against the petitioner.

Issue No. 12.—Further accusation is made against the Presiding Officer to the effect that on each day of the polling from 20th to 24th January, 1952, he had collected the ballot papers left by some ignorant voters placed on the ballot boxes without thrusting them into the ballot boxes, several times in the day and placed the papers thus collected into the boxes of Arjan Singh, respondent No. 1. But again this is a very wild allegation, like others enumerated in the issues decided above. Not one witness is produced who was to support this allegation of the Presiding Officer's collecting the pieces of ballot papers within the booth and placing them into the ballot box of the rival candidate Arjan Singh. According to the petitioner this practice was continued for all the five days from 20th to 24th. But it is strange enough that he could not find a single witness to support the aforesaid incident although it is said to have occurred several times each day continuously for five days.

Besides it a story is introduced in evidence by Joginder Singh and Rajinder Singh, Polling Officers (P.Ws. 6 and 7) that on 20th of January, 1952, the Presiding Officer happened to go out of the polling station for taking lunch and had requested the polling officers to keep an eye on the ballot boxes. Joginder Singh states that in the absence of the Presiding Officer he went inside and collected 67 ballot papers that were found by him lying here and there within the booth and that on his returning he handed them over to him which, according to the witnesses were not cancelled. It is significant that this particular allegation finds no place in the election petition and as it is not particularly made a ground of attack for challenging the election no evidence on the said point is admissible for proof of it. Had there been the slightest truth in the story, as is put forward by these witnesses, it was impossible for the petitioner to omit it from the petition. The petitioner has introduced not one but a number of accusations in the petition and how could he possibly omit this one, which could also have given him an additional chance to challenge the election. One of the witnesses Man Singh (P.W.10), who speaks about himself to be present at the time the packet of these 67 ballot papers was alleged to have been handed over to the Presiding Officer, gives out in his statement that he had spoken to Balbir Singh, the petitioner, about the said incident two days before the actual counting of the votes had taken place. But if the incident was actually within his knowledge from before, as is stated by P.W. 10, there was still the greater reason for it to find a place in the charges enumerated in the petition. Evidently the allegation is full of falsehood and the story about these 67 ballot papers being handed over to the Presiding Officer is a planned version to add one additional charge more, however false it may be. The accusation that the Presiding Officer had himself collected the ballot papers from within the booth and put them in the boxes of Arjan Singh, remains quite unsupported by any evidence. The issue is decided against the petitioner.

Issue No. 13.—The Presiding Officer was further accused of being in league with the respondent No. 1 and of having committed the various objectionable acts alleged in the petition, with his, and of his agent's connivance and knowledge but again not a single witness is examined which could be of any help to support these allegations of closer friendly relations between the two. Arjan Singh, respondent No. 1 (R.W. 9), on the other hand, is positive that he had no acquaintance with S. Surinder Singh Nirola or of his having any dealing with him. The respondent is a member of the Communist party for the last 10 or 12 years, and is positive that had S. Nirola any sort of connection with his party, as was attributed by the petitioner against him he was sure to have known about it. We are definitely of the opinion that the allegations to accuse the Presiding Officer to be committing acts to favour the respondent No. 1 are introduced out of some ulterior motive, and there is no truth whatever in it. We have not called the Presiding Officer in evidence to explain away the various charges that were levelled against him for the obvious reason that we attached no value to all those charges and we did not consider it necessary to summon him to explain his conduct. The issue is decided against the petitioner.

Issue No. 6.—This issue is not pressed and is decided against the petitioner.

Issue No. 4.—In view of the decisions given on issues Nos. 5 and 7 to 13 it is apparent that the charges for corrupt and illegal practices of bribery and undue

influence set up in the petition are not established at all by any evidence, and consequently there is no force in the contention that the election was not conducted in a free and a straight forward manner. The issue is decided against the petitioner.

Issue No. 14—The petitioner has totally failed to establish the charges of bribery, undue influence and the non-compliance of the provisions of law enunciated in lists "A", "B" and "C" attached with the petition and he is not entitled to any relief on the strength of them. But in view of the finding on Issue No. 1 that the nomination papers of the respondent No. 3 were accepted improperly by the Returning Officer and it had affected the result of the election materially, the entire election has to be set aside, both in respect of the General Seat and the Reserved Seat. The only proper relief, in the circumstances of the case, is to cancel the election as a whole. We, therefore, accept the election petition, set aside the elections of the candidates, Arjan Singh, respondent No. 1, and Dhanna Singh Gulshan, respondent No. 2, and declare the election to be wholly void.

The responsibility for costs is to lie on Nachittar Singh, the respondent No. 3, and not on the respondents Nos. 1 and 2, as it was because of his wrongful act of presenting false affidavits that led to the passing of the order for accepting his nomination papers, and which gave the petitioner a cause of action for the present petition. We, therefore, order that the respondent No. 3 shall pay Rs. 250/- as costs to the petitioner.

Pronounced this day the 13th May, 1953, in open court.

I agree.

I agree.

(Sd.) DALIP SINGH JAIN, *Member.* (Sd.) SHIVA GOPAL MATHUR, *Member.*

I agree.

(Sd.) JAGJIT SINGH, *Chairman.*

[No. 19/127/52-Elec.III/7835.]

By Order.

P. R. KRISHNAMURTHY, *Asstt. Secy.*

